

REMARKS

Reconsideration of the instant application in view of the above amendments and the following remarks is respectfully requested. As of the mailing date of the Office Action dated July 15, 2010, claims 2, 11, 31, 35, 36, and 38-41 were pending and under examination. By the present amendment, claims 31, 39, 40 and 41 are amended solely for the purposes of clarity. No new matter has been added. The above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Following the present amendments, claims 2, 11, 31, 35, 36, and 38-41 are pending and under consideration.

Supplemental Information Disclosure Statement

Applicants note that the Examiner did not acknowledge the references filed in the Supplemental Information Disclosure Statement filed on July 13, 2010. This Supplemental Information Disclosure Statement was filed properly with the fee of \$180. Applicants respectfully request that this Supplemental Information Disclosure Statement be acknowledged in the next official communication from the Examiner.

Request for Correction of Inventorship under 37 C.F.R. 1.48(a) and 1.48(b)

The Request for Correction of Inventorship stands rejected because it simultaneously added and deleted inventors. Applicants believe the Request was proper because the inventors being deleted were removed solely due to claims being deleted in the application, not due to an omission in the original inventorship set forth when the application was filed. According to 37 C.F.R. 1.48(b), there is no requirement for a statement from the deleted inventors if the inventors are being deleted due to the claimed subject matter of the application. The inventor being added was unintentionally omitted without deceptive intent. Correction of this unintentional error falls under 1.48(a). Applicants submit that the Request for Correction of Inventorship is proper as filed.

Applicants wish to thank the Examiner for discussing the Request for Correction of Inventorship and for the telephone message of October 1, 2010 indicating that the Request would be acceptable with the payment of an additional fee to cover the cost of two Requests. While Applicants do not believe an additional fee is necessary, Applicants submit herewith the additional fee of \$130 per the Examiner's request. Accordingly, reconsideration and acceptance of the Request for Correction of Inventorship is requested.

Claim Rejections – 35 U.S.C. § 112, second paragraph

Claims 39-41 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the PTO notes that claim 40 incorrectly depends from itself. The PTO further asserts that claims 39 and 41 lack antecedent basis in that they are composition claims that depend from a compound that is not a composition.

Applicants have amended claim 40 to correctly depend from claim 39, thereby obviating the rejection with regard to this claim. Concerning claims 39 and 41, Applicants respectfully disagree with the Examiner and note that the claims recite “A composition comprising the polypeptide of claim 2...” There is no antecedent basis in claim 2 for the term “composition” and it is therefore referred to using the indefinite article “a”. However, the claims as amended refer back to claim 2 using the definite article “the” and specifically recite “the polypeptide of claim 2”. Accordingly, Applicants submit that the claims are not indefinite and would be readily understood by the skilled person. Reconsideration of the claims and withdrawal of the rejection are respectfully requested.

Claim Rejections – 35 U.S.C. § 102

Claims 2, 11, 31, 35, 36, 38, 40, and 41 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Gaiger *et al.*, U.S. Patent No. 7,144,581 (hereinafter “Gaiger”).

The inventors of the presently claimed invention are Alexander Gaiger and Martin Cheever. As such, the issued 7,144,581 patent in the name of Alexander Gaiger and Martin Cheever, is not “by another” and may not be used as prior art under 35 U.S.C. § 102(e).

Applicants submit that this rejection is obviated in view of the Request for Inventorship Correction and respectfully request that the rejection be withdrawn.

In closing, Applicants respectfully submit that all of the pending claims are allowable and respectfully requests favorable reconsideration of this application and its timely allowance. A good faith effort has been made to place the application in condition for allowance. However, in the event the Examiner has further questions or finds minor informalities that can be resolved by telephone conference, the Examiner is urged to contact Applicants' representative at (206) 622-4900.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
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